

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1645.00
COMPLAINT INVESTIGATOR: Sandie Scudder
DATE OF COMPLAINT: October 30, 2000
DATE OF REPORT: December 14, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 24, 2001

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

- 511 IAC 7-18-2(a) with regard to the school's alleged failure to provide a student with a disability a free appropriate public education.
- 511 IAC 7-29-1(f) with regard to the school's alleged failure to provide educational services to a student with a disability who has been suspended for more than ten cumulative school days.

During the course of the investigation, additional issues were identified, which are:

- 511 IAC 7-29-5 with regard to the school's alleged failure to conduct a case conference to develop a functional behavioral assessment plan or review an existing behavioral intervention plan for a student who had been suspended for more than ten cumulative school days.
- 511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written.
- 511 IAC 7-27-7(b) and 511 IAC 7-17-72 with regard to the school's alleged failure to ensure the student's teacher of record monitored the implementation of the student's IEP and reported the student's progress to the parent.

The original complaint investigation report was due to be completed by November 29, 2000. An extension of time to December 13, 2000, was granted in order for the complaint investigator to obtain additional documentation pertinent to the issues.

FINDINGS OF FACT:

1. The Student is 16 years old and is eligible for special education services as a student with an Emotional Disability.
2. On September 6, 2000, the Student received two days of in-school suspension. There is no documentation to indicate that the Student's IEP was implemented during this period of suspension.

3. On September 22, 2000, the student was suspended for three days. The student returned to school on September 27, 2000.
4. The parent asserts the Student was suspended again on September 28, 2000, and was advised not to return until the CCC was convened. A CCC meeting was convened on October 12, 2000. The parent states the Student did not return to school until November 1, 2000.
5. Despite a request for the formal attendance records of the Student, the school failed to submit such records. The documentation submitted by the school regarding the Student's attendance is contradictory and does not provide sufficient information about the Student's attendance or periods of suspension. The contradictory information is evidenced by the following documents:
 - A narrative from the high school principal states that, from August 25 through December 5, 2000, the Student has been absent for 3 days due to illness and three days due to suspension.
 - The CCC Report/IEP dated October 12, 2000, states that as of October 12, the Student had been absent 15 days in addition to 5 days suspensions.
 - A subsequent CCC Report/IEP, dated November 14, 2000, states that, as of November 14, 2000, the Student had been absent 25 days and had been suspended for 13 days.
6. The school submitted no documentation regarding the additional days of suspension identified in the November 14, 2000, IEP, and there is no way to determine when the tenth cumulative day of suspension occurred. However, based on the parent's report, the Student had no suspensions subsequent to November 1, 2000; therefore, the additional ten days of suspension that occurred between the October 12 and November 14 CCC meetings were imposed between October 12 and November 1. Further, the School did not provide any documentation that the Student received any special education services subsequent to the tenth cumulative day of suspension.
7. The CCC Report/IEP dated October 12, 2000, includes a *Functional Behavioral Assessment* form dated October 3, 2000, as well as an IEP Addendum *Individual Behavior Management Plan* with the same date. Although identified as an IEP Addendum, there is no documentation to indicate that the Behavior Management Plan was developed by the CCC.
8. On October 12, 2000, the CCC determined the Student's placement should be "instruction or related services provided in the home, or at a neutral site at the election of the school corporation, by a licensed special education teacher or related services staff member." The IEP further states "Student is to receive instruction at home or an alternative site."
9. There are two pages denominated as "CCR/IEP 9" in the October 12, 2000, CCC Report/IEP. One of these pages indicates the Student will participate in homebound services and includes "Special Needs Classes: math = 80 minutes per week; science = 80 minutes per week & English = 80 minutes per week." The other "CCR/IEP 9" page indicates that the Student will attend school, will have a classroom aide, will have program modifications and accommodations in general education, will have one period per day of elective, and will attend special education classes in math, science, speech, and physical education. The student was also to receive individual or group counseling for 30 minutes per week. The initiation date for services was October 19, 2000.
10. Between October 12 and November 1, the Student neither attended school nor received any homebound services. The parent states the Student has missed only 3 ½ days of school due to illness since November 1, 2000. According to the parent, the Student has not been suspended since November 1, 2000.
11. On November 14, 2000, a CCC meeting convened. It was decided at this time that the Student's

placement should be "special education instruction for most of the instructional day, with instruction in the general classroom for part of the day." The Student is to have a classroom aide, one period per day of elective, and attend special education classes for math, English, science, Afro-American history, and speech. The IEP further stated that the Student would receive "compensatory" instruction on a homebound basis for 3 hours per week for 8 weeks to make up for the previous interruption in services. The initiation date for these services is stated as November 14, 2000. The IEP also includes a provision that the parent will receive a weekly report on the Student's progress on each of the annual goals and short-term objectives. On one of the goal pages it states that the progress will be reported via weekly telephone contact, while the other goal pages state that progress will be reported via a weekly report to parent. The CCC also reviewed the behavioral intervention plan that had been developed on October 3, 2000.

12. The "compensatory" services were not initiated until December 4, 2000.
13. The parent has received no progress reports since the November 14, 2000, CCC meeting.

CONCLUSIONS:

1. Findings of Fact #1 through #12 indicate that the Student experienced a significant interruption in special education services between September 28 and November 1, 2000. The school failed to provide the Student with a free appropriate public education during this time. Therefore, a violation of 511 IAC 7-18-2 occurred.
2. Finding of Fact #5 reflects that the Student was suspended for 13 cumulative instructional days. As indicated by Findings of Fact #4, #5, and #6, the lack of documentation makes it impossible to determine when the tenth cumulative day of suspension occurred, although it occurred sometime between October 12 and November 1, 2000. Finding of Fact #10 indicates that the School provided no special education services to the Student between October 12 and November 1, 2000. Therefore, a violation of 511 IAC 7-29-1(f) occurred.
3. Findings of Fact #4, #5, and #6 indicate that the student's tenth cumulative day of suspension occurred sometime between October 12 and November 1, 2000. As the Student accumulated 13 days of suspension by November 1, 2000, the tenth cumulative day of suspension could have occurred no later than October 27, 2000. Finding of Fact #7 indicates that a functional behavioral assessment and a behavioral intervention plan were completed on October 3, 2000. A CCC was required to convene within 10 business days of the 10th cumulative day of suspension in order to review the existing behavioral intervention plan. Ten business days from October 27, 2000 is November 10, 2000. Finding of Fact #9 indicates that the CCC to review the behavioral intervention plan did not occur until November 14, 2000. Therefore, a violation of 511 IAC 7-29-5 occurred.
4. Finding of Fact #9 indicates that the October 12, 2000, CCC Report/IEP contains contradictory information regarding the Student's placement and special education services, identifying full-time placement in a homebound or neutral site, as well as in general and special education classes in the local high school. Finding of Fact #10 reflects that the Student received no services between October 12 and November 1, 2000. Further, Findings of Fact #11 and #12 reflect that, beginning November 14, 2000, the Student was to receive compensatory services; however, such services were not initiated until December 4, 2000. Finding of Facts #11 and #13 indicate that the parent was to receive weekly reports on the student's progress, but no reports have been forthcoming. Therefore, a violation of 511 IAC 7-27-7(a) is found.
5. 511 IAC 7-17-72(3) requires the teacher of record to monitor the implementation of the student's IEP and to provide progress reports to the student's parent. Conclusion #4 finds that the Student's

IEP was not implemented as written. Findings of Fact #11 and #13 indicate that the student's progress was to be reported to the parent on a weekly basis, but has not been done as required by the Student's IEP. Therefore, violations of 511 IAC 7-27-7(b) and 511 IAC 7-17-72 are found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Gary Community School Corporation shall:

1. Reconvene the case conference committee to :
 - a. identify what the previously identified compensatory services will include;
 - b. identify how the compensatory services will be documented; and
 - c. consider whether additional compensatory services are needed as a result of the interruption in services and failure to implement the IEP.

A copy of the CCC Report/IEP shall be submitted to the Division no later than January 10, 2001.

2. Provide inservice training to appropriate staff personnel regarding the requirements of 511 IAC 7-27-7(b), 511 IAC 7-17-72, 511 IAC 7-29-1, 511 IAC 7-29-5. **Documentation in the form of the inservice training agenda, along with a sign-in sheet of all attendees, by name and title, and any handouts provided shall be submitted to the Division no later than January 20, 2001.**
3. Provide documentation of the student's daily attendance beginning with the first instructional day in January, 2001. Documentation must identify student's attendance status (i.e., excused, absent, suspended, expelled, partial school day, etc.) for each instructional day. **Documentation of attendance in the form of a computer print-out must be submitted to the Division on the last business day of the month beginning with January, 2001, through the end of the 2000-2001 school year.**
4. The teacher of record will monitor implementation of the IEP and will send weekly progress reports to the complainant. **Copies of these weekly progress reports must be submitted to the Division on the last business day of each month starting with January 2001, through the end of the 2000-2001 school year.**